IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 98-35066

ONEIDA WOOD PRODUCTS, INC.

Debtor

MICHAEL H. FITZPATRICK, TRUSTEE

Plaintiff and
Counter-Defendant

v. Adv. Proc. No. 00-3120

COX INDUSTRIES, INC.

Defendant and
Counter-Plaintiff

MEMORANDUM ON
MOTIONS FOR SUMMARY JUDGMENT

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

Michael H. Fitzpatrick, Trustee (Trustee), filed a Complaint on October 31, 2000, seeking damages for the Defendant's alleged breach of contract. In turn, by an Answer and Counterclaim filed January 5, 2001, the Defendant seeks damages resulting from the Trustee's alleged breach of the same alleged contract. This controversy stems from the parties' failure to close a negotiated sale of the Debtor's assets. Presently before the court is the Motion for Summary Judgment filed by the Defendant on July 31, 2001, and the Plaintiff's Motion for Partial Summary Judgment filed by the Trustee on August 10, 2001.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (O) (West 1993). To the extent any issues may be noncore, the parties have consented to the entry of final orders and judgments by the bankruptcy judge pursuant to 28 U.S.C.A. § 157(c)(2) (West 1993).

I

By letter dated February 1, 2000, and signed by its Corporate Development Officer, R. Michael Johnson, the Defendant offered to purchase the Debtor's assets for $1,315,000.00. This price was subject to adjustment based on the value of the Debtor's inventory on the eventual date of sale.[1] The Defendant proposed to arrive at the adjusted inventory figure by comparing the Debtor's asset/liability mix as of January 14, 2000,[2] with the mix in place on the closing date. Specifically, the Defendant's offer stated that to the inventory value for January 14, 2000, it would

[1] The parties' disagreement centers around the manner in which the inventory value was to be adjusted. Accordingly, the court will review the material portions of the parties' written communications in some detail.

[2] This date refers to an inventory of the Debtor's assets which was faxed to the Defendant on January 14, 2000. This inventory, prepared by Alvin Escue, valued the Debtor's assets at $947,320.32. According to the Defendant, Mr. Escue was the majority shareholder of the Debtor.

add the cash and accounts receivable on hand as of December 12, 1999, and subtract the accounts payable as of December 12, 1999, to arrive at an adjusted initial inventory value. The offer further proposed to repeat this calculation at the time of sale by taking another inventory, adding that date's cash and accounts receivable, and subtracting that date's accounts payable. The offer concluded:

> If this value [the later date] is in excess of the above described amount [the adjusted January 14, 2000 inventory value], we will adjust our purchase price [$1,315,000.00] up by that difference. Likewise, if that figure is less than the derived amount, we will adjust that figure down accordingly.

The Defendant's offer explained that these adjustments were desirable because ?as an ongoing business these levels change daily."

On February 7, 2000, the Trustee replied to Defendant's offer by letter ?with clarifications, additions and counter points." The Trustee proposed a sale price of $1,350,000.00 and offered a different inventory adjustment calculation. As in the Defendant's offer, the Trustee proposed the taking of an inventory at closing, adding to that figure the cash and accounts receivable on hand at closing, and subtracting the accounts payable owed at closing. The Trustee's proposal differed from the Defendant's, however, in that the Trustee did not propose a similar adjustment to the January 14, 2000 inventory.

The Defendant then replied by letter from its president, William B. Cox (Cox), dated February 8, 2000. The Defendant expressed its unwillingness to adjust its original offer price of $1,315,000.00. However, in regard to all other aspects of the proposed sale, the Defendant stated

?with the exception of the purchase price you used in determining the adjustment of the final purchase price, I agree with your interpretation of our offer."

The Trustee replied on February 11, 2000, by letter which again called for a $1,350,000.00 purchase price. The Trustee also corrected mathematical errors contained in his prior letter but did not further address the inventory adjustment formula.

Also on February 11, 2000, the Trustee sent letters to at least four other potential purchasers of the Debtor's assets. These letters provided in material part:

> I am in the process of concluding negotiations with a company to buy the physical assets of this business for $1,350,000.00. If you are still interested, I need something in writing by the close of business on Friday, February 18, 2000.

The next communication between the Defendant and the Trustee was Cox's February 14, 2000 letter. This letter amended the Defendant's offering price to $1,350,000.00 ?subject to the adjustments and limitations already agreed upon." A letter sent to Cox by the Trustee on the same date referenced ?our telephone conversation Friday at which time you accepted the counter offer presented in my last letter[.]" However, the Trustee advised that he was still accepting other bids at that time.

On February 28, 2000, the court entered an Order Approving Sale. The Order authorized sale of the Debtor's assets to the Defendant for $1,350,000.00, subject to the Trustee's method of

inventory adjustment. The parties scheduled a closing on the same date but did not complete the sale as they were unable to agree on a January 14, 2000 inventory value.[3]

By letter dated February 29, 2000, the Trustee advised the Defendant that it had ?breached a binding contract by its refusal to close the sale[.]" By a reply faxed later that day, Cox reiterated that he understood the sale price would include an adjustment for variations between the December and February levels of cash, accounts receivable, and accounts payable. Mr. Cox further stated ?I also agree with your interpretation of our agreement that we have a contract. It seems that we just couldn't agree on the final calculation."

II

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted ?if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); *see also* FED. R. BANKR. P. 7056. The nonmoving party bears the burden of producing specific facts showing that there is a genuine issue for trial. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986) (citing FED. R. CIV. P. 56(e)).

The facts, and all inferences to be drawn from them, must be viewed in the light most favorable to the nonmovant. *See Matsushita*, 106 S. Ct. at 1356. The court's function is not to ?weigh the evidence and determine the truth of the matter but to determine whether there is a

[3] The parties' valuations were approximately $80,000.00 to $100,000.00 apart.

genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2511 (1986). In so doing, the court must decide whether **?**the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id*. at 2512. As with motions for directed verdict under FED. R. CIV. P. 50(a), the court must grant summary judgment if, under the governing law, the evidence leads to only one reasonable conclusion. *See id* at 2511.

III

In support of its Motion for Summary Judgment, the Defendant advances four theories:

1) there was no meeting of the minds as to a material term (price), and therefore no contract was ever formed;

2) there was no consideration, and therefore no contract was ever formed;

3) the parties intended no obligation to exist until a written document was executed, and therefore no contract was ever formed; or

4) a contract existed with the inventory valuation as understood by the Defendant, and the Trustee breached the contract by refusing to close.

Conversely, the Trustee by his Motion for Partial Summary Judgment contends that a contract existed containing his inventory calculation, and it was the Defendant who breached the contract by failing to close the deal.

(a) Contract Formation

A contract, whether express, implied, written, or oral, ?must result from a meeting of the minds of the parties in mutual assent to the terms, must be based upon a sufficient consideration . . . and sufficiently definite to be enforced." *Johnson v. Central Nat'l Ins. Co.*, 356 S.W.2d 277, 281 (Tenn. 1962). A ?meeting of the minds" requires an unconditional acceptance ?identical with the offer." *Canton Cotton Mills v. Bowman Overall Co.*, 257 S.W. 398, 402 (Tenn. 1924) (citation omitted).

The Trustee points to several pieces of evidence supporting his position that the parties' minds did in fact meet in formation of a contract. In his February 8, 2000 letter to the Trustee, Cox stated ?I agree with your interpretation of our offer." In his February 14, 2000 letter, Cox similarly referred to the price adjustments ?already agreed upon." Cox's February 29, 2000 fax to the Trustee further states ?I also agree with your interpretation of our agreement that we have a contract." By deposition, Cox further stated ?I thought we had come to a consensus of the mind as to the various parts of the purchase price."

Viewing these facts and all resulting inferences in the light most favorable to the Trustee, *see Matsushita*, 106 S. Ct. at 1356, the court finds that the Trustee has demonstrated a genuine issue for trial regarding the ?meeting of the parties' minds." Allowing all reasonable inferences to be drawn from these facts and ?discard[ing] all countervailing evidence" as the court must do at this stage of the proceedings, summary judgment is not warranted on this issue. *Jamestowne on Signal, Inc. v. First Fed. Sav. & Loan Ass'n*, 807 S.W.2d 559, 564 (Tenn. Ct. App. 1990).

Notwithstanding the existence of a general issue of fact on the contract formation issue, the court finds it perplexing that the Trustee was still soliciting other offers after he claims the contract was formed. Nonetheless, a jury question exists regarding the ?meeting of the parties' minds."

For the same reasons, summary judgment is not warranted on the Defendant's argument that the parties intended no contract would exist until a written document was executed. As noted, the Trustee has demonstrated a genuine issue for trial regarding the formation of a contract prior to closing.

The Defendant's lack of consideration argument also must fail. If all other elements of a contract are present, the parties' mutual promises of performance constitute sufficient consideration. *See Rodgers v. Southern Newspapers, Inc.*, 379 S.W.2d 797, 800 (Tenn. 1964); *Seward v. Mitchell*, 41 Tenn. 87, 1860 WL 3008 (Tenn. 1860); *Bill Walker & Assocs., Inc. v. Parrish*, 770 S.W.2d 764, 771 (Tenn. Ct. App. 1989).

(b) Contract Terms

Each party has produced ample facts to indicate that the purported contract did not contain the inventory valuation formula proposed by the other side. As one example, the Trustee points to his February 7, 2000 ?clarifications, additions and counter points" letter, which sets forth an inventory calculation differing from that presented in the Defendant's original offer. In response, the Defendant contends that the Trustee did not clearly reject, and therefore incorporated, the offer's proposed valuation.

Evidence of the terms of the parties' contract, if there ever was a contract, is not ?so one-sided that one party must prevail as a matter of law." *Anderson*, 106 S. Ct. at 2512. Accordingly, neither the Trustee nor the Defendant is entitled to summary judgment on the issue of contract breach.

For the reasons stated herein, the parties' respective summary judgment motions will be denied. An appropriate order will be entered.

FILED: September 6, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

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Defendant and
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O R D E R

For the reasons stated in the Memorandum on Motions for Summary Judgment filed this date, the court directs that the Motion for Summary Judgment filed by the Defendant on July 31, 2001, and the Plaintiff's Motion for Partial Summary Judgment filed by the Plaintiff on August 10, 2001, are DENIED.

SO ORDERED.

ENTER: September 6, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE